

HJR 28 – “Best Value” Construction

facilitated by:

A&E Division, Department of Administration, State of Montana

Code of Federal Regulations

Data from the federal CFR FAR (Federal Acquisition Regulations) regarding various delivery methods for construction:

Regulation:	Type of Delivery Method Allowed:							Conditions for Use:
	DB B	D/B	DN B	CM @ R	Pre- qual	Perf orm anc e	Oth	
Competition Requirements								<p>6.102 Use of competitive procedures.</p> <p>The competitive procedures available for use in fulfilling the requirement for full and open competition are as follows:</p> <p>(a) <i>Sealed bids.</i> (See 6.401(a).)</p> <p>(b) <i>Competitive proposals.</i> (See 6.401(b).) If sealed bids are not appropriate under paragraph (a) of this section, contracting officers shall request competitive proposals or use the other competitive procedures under paragraph (c) or (d) of this section.</p> <p>(c) <i>Combination of competitive procedures.</i> If sealed bids are not appropriate, contracting officers may use any combination of competitive procedures (<i>e.g.</i>, two-step sealed bidding).</p> <p>(d) <i>Other competitive procedures.</i></p> <p>(1) Selection of sources for architect-engineer contracts in accordance with the provisions of Pub. L. 92-582 (40 U.S.C. 541, <i>et seq.</i>) is a competitive procedure (see Subpart 36.6 for procedures).</p>

Sealed Bids	X							<p>6.401 Sealed bidding and competitive proposals.</p> <p>Sealed bidding and competitive proposals, as described in Parts 14 and 15, are both acceptable procedures for use under Subparts 6.1, 6.2; and, when appropriate, under Subpart 6.3.</p> <p>(a) <i>Sealed bids.</i> (See Part 14 for procedures.) Contracting officers shall solicit sealed bids if-</p> <p>(1) Time permits the solicitation, submission, and evaluation of sealed bids;</p> <p>(2) The award will be made on the basis of price and other price-related factors;</p> <p>(3) It is not necessary to conduct discussions with the responding offerors about their bids; and</p> <p>(4) There is a reasonable expectation of receiving more than one sealed bid.</p>
	X							<p>14.101 Elements of sealed bidding.</p> <p>Sealed bidding is a method of contracting that employs competitive bids, public opening of bids, and awards. The following steps are involved:</p> <p>(a) <i>Preparation of invitations for bids.</i> Invitations must describe the requirements of the Government clearly, accurately, and completely. Unnecessarily restrictive specifications or requirements that might unduly limit the number of bidders are prohibited. The invitation includes all documents (whether attached or incorporated by reference) furnished prospective bidders for the purpose of bidding.</p> <p>(b) <i>Publicizing the invitation for bids.</i> Invitations must be publicized through distribution to prospective bidders, posting in public places, and such other means as may be appropriate. Publicizing must occur a sufficient time before public opening of bids to enable prospective bidders to prepare and submit bids.</p> <p>(c) <i>Submission of bids.</i> Bidders must submit sealed bids to be opened at the time and place stated in the solicitation for the public opening of bids.</p> <p>(d) <i>Evaluation of bids.</i> Bids shall be evaluated without discussions.</p> <p>(e) <i>Contract award.</i> After bids are publicly opened, an award will be made with reasonable promptness to that responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the Government, considering only price and the price-related factors included in the invitation.</p>
	X							<p>14.103 Policy.</p> <p>14.103-1 General.</p> <p>(a) Sealed bidding shall be used whenever the conditions in 6.401(a) are met. This requirement applies to any proposed contract action under Part 6.</p> <p>(b) Sealed bidding may be used for classified acquisitions if its use does not violate agency security requirements.</p> <p>(c) The policy for pricing modifications of sealed bid contract appears in 15.403-4(a)(1)(iii).</p> <p>14.103-2 Limitations.</p> <p>No awards shall be made as a result of sealed bidding unless-</p>

							<p>(a) Bids have been solicited as required by Subpart 14.2;</p> <p>(b) Bids have been submitted as required by Subpart 14.3;</p> <p>(c) The requirements of 1.602-1(b) and Part 6 have been met; and</p> <p>(d) An award is made to the responsible bidder (see 9.1) whose bid is responsive to the terms of the invitation for bids and is most advantageous to the Government, considering only price and the price related factors included in the invitation, as provided in Subpart 14.4.</p>
	X	X			X		<p>14.104 Types of contracts.</p> <p>Firm-fixed-price contracts shall be used when the method of contracting is sealed bidding, except that fixed-price contracts with economic price adjustment clauses may be used if authorized in accordance with 16.203 when some flexibility is necessary and feasible. Such clauses must afford all bidders an equal opportunity to bid.</p>
	X	X			X		<p>Subpart 14.5- Two-Step Sealed Bidding</p> <p>14.501 General.</p> <p>Two-step sealed bidding is a combination of competitive procedures designed to obtain the benefits of sealed bidding when adequate specifications are not available. An objective is to permit the development of a sufficiently descriptive and not unduly restrictive statement of the Government's requirements, including an adequate technical data package, so that subsequent acquisitions may be made by conventional sealed bidding. This method is especially useful in acquisitions requiring technical proposals, particularly those for complex items. It is conducted in two steps:</p> <p>(a) Step one consists of the request for, submission, evaluation, and (if necessary) discussion of a technical proposal. No pricing is involved. The objective is to determine the acceptability of the supplies or services offered. As used in this context, the word "technical" has a broad connotation and includes, among other things, the engineering approach, special manufacturing processes, and special testing techniques. It is the proper step for clarification of questions relating to technical requirements. Conformity to the technical requirements is resolved in this step, but not responsibility as defined in 9.1.</p> <p>(b) Step two involves the submission of sealed priced bids by those who submitted acceptable technical proposals in step one. Bids submitted in step two are evaluated and the awards made in accordance with Subparts 14.3 and 14.4.</p> <p>14.502 Conditions for use.</p> <p>(a) Unless other factors require the use of sealed bidding, two-step sealed bidding may be used in preference to negotiation when all of the following conditions are present:</p> <p>(1) Available specifications or purchase descriptions are not definite or complete or may be too restrictive without technical evaluation, and any necessary discussion, of the technical aspects of the requirement to ensure mutual understanding between each source and the Government.</p> <p>(2) Definite criteria exist for evaluating technical proposals.</p>

								<p>(3) More than one technically qualified source is expected to be available.</p> <p>(4) Sufficient time will be available for use of the two-step method.</p> <p>(5) A firm-fixed-price contract or a fixed-price contract with economic price adjustment will be used.</p> <p>(b) None of the following precludes the use of two-step sealed bidding:</p> <p>(1) Multi-year contracting.</p> <p>(2) Government-owned facilities or special tooling to be made available to the successful bidder.</p> <p>(3) A total small business set-aside (see 19.502-2).</p> <p>(4) The use of the price evaluation adjustment for small disadvantaged business concerns (see Subpart 19.11).</p> <p>(5) The use of a set-aside or price evaluation preference for HUB Zone small business concerns (see Subpart 19.13).</p> <p>(6) A first or subsequent production quantity is being acquired under a performance specification.</p> <p>14.503 Procedures.</p> <p>14.503-1 Step one.</p> <p>(a) Requests for technical proposals shall be synopsisized in accordance with Part 5. The request must include, as a minimum, the following:</p> <p>(1) A description of the supplies or services required.</p> <p>(2) A statement of intent to use the two-step method.</p> <p>(3) The requirements of the technical proposal.</p> <p>(4) The evaluation criteria, to include all factors and any significant subfactors.</p> <p>(5) A statement that the technical proposals shall not include prices or pricing information.</p> <p>(6) The date, or date and hour, by which the proposal must be received (see 14.201-6(r)).</p> <p>(7) A statement that-</p> <p>(i) In the second step, only bids based upon technical proposals determined to be acceptable, either initially or as a result of discussions, will be considered for awards, and</p> <p>(ii) Each bid in the second step must be based on the bidder's own technical proposals.</p> <p>(8) A statement that-</p> <p>(i) Offerors should submit proposals that are acceptable without additional explanation or information,</p> <p>(ii) The Government may make a final determination regarding a proposal's acceptability solely on the basis of the proposal as submitted; and</p> <p>(iii) The Government may proceed with the second step without requesting further information from any offeror; however, the Government may request additional information from offerors of proposals that it considers reasonably susceptible of being made acceptable, and may discuss proposals with their offerors.</p> <p>(9) A statement that a notice of unacceptability will be forwarded to the offeror upon completion of the proposal evaluation and final determination of unacceptability.</p> <p>(10) A statement either that only one technical proposal may be submitted by each offeror or that multiple technical proposals may be submitted. When specifications permit different technical approaches, it is generally in the Government's interest to authorize multiple proposals. If multiple proposals are authorized, see 14.201-6(s).</p>
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								<p>the acquisition may be continued by negotiation.</p> <p>14.503-2 Step two.</p> <p>(a) Sealed bidding procedures shall be followed except that invitations for bids shall-</p> <p>(1) Be issued only to those offerors submitting acceptable technical proposals in step one;</p> <p>(2) Include the provision prescribed in 14.201-6(t);</p> <p>(3) Prominently state that the bidder shall comply with the specifications and the bidder's technical proposal; and</p> <p>(4) Not be synopsisized through the Government wide point of entry (GPE) as an acquisition opportunity nor publicly posted (see 5.101(a)).</p> <p>(b) The names of firms that submitted acceptable proposals in step one will be listed through the GPE for the benefit of prospective subcontractors (see 5.207).</p>
Competitive Proposals		X	X			X		<p>6.401 Sealed bidding and competitive proposals.</p> <p>Sealed bidding and competitive proposals, as described in Parts 14 and 15, are both acceptable procedures for use under Subparts 6.1, 6.2; and, when appropriate, under Subpart 6.3.</p> <p>(b) <i>Competitive proposals.</i> (See Part 15 for procedures.)</p> <p>(1) Contracting officers may request competitive proposals if sealed bids are not appropriate under paragraph (a) of this section.</p> <p>(2) Because of differences in areas such as law, regulations, and business practices, it is generally necessary to conduct discussions with offerors relative to proposed contracts to be made and performed outside the United States and its outlying areas. Competitive proposals will therefore be used for these contracts unless discussions are not required and the use of sealed bids is otherwise appropriate.</p>
		X	X			X		<p>15.000 Scope of part.</p> <p>This part prescribes policies and procedures governing competitive and noncompetitive negotiated acquisitions. A contract awarded using other than sealed bidding procedures is a negotiated contract (see 14.101).</p>
		X	X		X	X		<p>15.002 Types of negotiated acquisition.</p> <p>(a) <i>Sole source acquisitions.</i></p> <p>(b) <i>Competitive acquisitions.</i> When contracting in a competitive environment, the procedures of this part are intended to minimize the complexity of the solicitation, the evaluation, and the source selection decision, while maintaining a process designed to foster an impartial and comprehensive</p>

							evaluation of offerors' proposals, leading to selection of the proposal representing the best value to the Government (see 2.101).
		X	X		X	X	<p>Subpart 15.1- Source Selection Processes and Techniques</p> <p>15.100 Scope of subpart.</p> <p>This subpart describes some of the acquisition processes and techniques that may be used to design competitive acquisition strategies suitable for the specific circumstances of the acquisition.</p> <p>15.101 Best value continuum.</p> <p>An agency can obtain best value in negotiated acquisitions by using any one or a combination of source selection approaches. In different types of acquisitions, the relative importance of cost or price may vary. For example, in acquisitions where the requirement is clearly definable and the risk of unsuccessful contract performance is minimal, cost or price may play a dominant role in source selection. The less definitive the requirement, the more development work required, or the greater the performance risk, the more technical or past performance considerations may play a dominant role in source selection.</p> <p>15.101-1 Tradeoff process.</p> <p>(a) A tradeoff process is appropriate when it may be in the best interest of the Government to consider award to other than the lowest priced offeror or other than the highest technically rated offeror.</p> <p>(b) When using a tradeoff process, the following apply:</p> <p>(1) All evaluation factors and significant subfactors that will affect contract award and their relative importance shall be clearly stated in the solicitation; and</p> <p>(2) The solicitation shall state whether all evaluation factors other than cost or price, when combined, are significantly more important than, approximately equal to, or significantly less important than cost or price.</p> <p>(c) This process permits tradeoffs among cost or price and non-cost factors and allows the Government to accept other than the lowest priced proposal. The perceived benefits of the higher priced proposal shall merit the additional cost, and the rationale for tradeoffs must be documented in the file in accordance with 15.406.</p> <p>15.101-2 Lowest price technically acceptable source selection process.</p> <p>(a) The lowest price technically acceptable source selection process is appropriate when best value is expected to result from selection of the technically acceptable proposal with the lowest evaluated price.</p> <p>(b) When using the lowest price technically acceptable process, the following apply:</p> <p>(1) The evaluation factors and significant subfactors that establish the requirements of acceptability shall be set forth in the solicitation. Solicitations shall specify that award will be made on the basis of the lowest evaluated price of proposals meeting or exceeding the acceptability standards for non-cost</p>

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	X	X		X	X		<p>Subpart 15.3- Source Selection</p> <p>15.300 Scope of subpart.</p> <p>This subpart prescribes policies and procedures for selection of a source or sources in competitive negotiated acquisitions.</p> <p>15.301 [Reserved]</p> <p>15.302 Source selection objective.</p> <p>The objective of source selection is to select the proposal that represents the best value.</p> <p>15.303 Responsibilities.</p> <p>(a) Agency heads are responsible for source selection. The contracting officer is designated as the source selection authority, unless the agency head appoints another individual for a particular acquisition or group of acquisitions.</p> <p>(b) The source selection authority shall-</p> <p>(1) Establish an evaluation team, tailored for the particular acquisition, that includes appropriate contracting, legal, logistics, technical, and other expertise to ensure a comprehensive evaluation of offers;</p> <p>(2) Approve the source selection strategy or acquisition plan, if applicable, before solicitation release;</p> <p>(3) Ensure consistency among the solicitation requirements, notices to offerors, proposal preparation instructions, evaluation factors and subfactors, solicitation provisions or contract clauses, and data requirements;</p> <p>(4) Ensure that proposals are evaluated based solely on the factors and subfactors contained in the solicitation (10 U.S.C. 2305(b)(1) and 41 U.S.C. 253b(d)(3));</p> <p>(5) Consider the recommendations of advisory boards or panels (if any); and</p> <p>(6) Select the source or sources whose proposal is the best value to the Government (10 U.S.C. 2305(b)(4)(B) and 41 U.S.C. 253b(d)(3)).</p> <p>(c) The contracting officer shall-</p> <p>(1) After release of a solicitation, serve as the focal point for inquiries from actual or prospective offerors;</p> <p>(2) After receipt of proposals, control exchanges with offerors in accordance with 15.306; and</p>

							(3) Award the contract(s).
	X	X		X	X		<p>15.304 Evaluation factors and significant subfactors.</p> <p>(a) The award decision is based on evaluation factors and significant subfactors that are tailored to the acquisition.</p> <p>(b) Evaluation factors and significant subfactors must-</p> <p>(1) Represent the key areas of importance and emphasis to be considered in the source selection decision; and</p> <p>(2) Support meaningful comparison and discrimination between and among competing proposals.</p> <p>(c) The evaluation factors and significant subfactors that apply to an acquisition and their relative importance, are within the broad discretion of agency acquisition officials, subject to the following requirements:</p> <p>(1) Price or cost to the Government shall be evaluated in every source selection (10 U.S.C. 2305(a)(3)(A)(ii) and 41 U.S.C. 253a(c)(1)(B)) (also see Part 36 for architect-engineer contracts);</p> <p>(2) The quality of the product or service shall be addressed in every source selection through consideration of one or more non-cost evaluation factors such as past performance, compliance with solicitation requirements, technical excellence, management capability, personnel qualifications, and prior experience (10 U.S.C. 2305(a)(3)(A)(i) and 41 U.S.C. 253a(c)(1)(A)); and</p> <p>(3)(i) Except as set forth in paragraph (c)(3)(iv) of this section, past performance shall be evaluated in all source selections for negotiated competitive acquisitions expected to exceed \$1,000,000.</p> <p>(ii) Except as set forth in paragraph (c)(3)(iv) of this section, past performance shall be evaluated in all source selections for negotiated competitive acquisitions issued on or after January 1, 1999, for acquisitions expected to exceed \$100,000. Agencies should develop phase-in schedules that meet or exceed this schedule.</p> <p>(iii) For solicitations involving bundling that offer a significant opportunity for subcontracting, the contracting officer must include a factor to evaluate past performance indicating the extent to which the offeror attained applicable goals for small business participation under contracts that required subcontracting plans (15 U.S.C. 637(d)(4)(G)(ii)).</p> <p>(iv) Past performance need not be evaluated if the contracting officer documents the reason past performance is not an appropriate evaluation factor for the acquisition.</p> <p>(4) The extent of participation of small disadvantaged business concerns in performance of the contract shall be evaluated in unrestricted acquisitions expected to exceed \$500,000 (\$1,000,000 for construction) subject to certain limitations (see 19.201 and 19.1202).</p> <p>(5) For solicitations involving bundling that offer a significant opportunity for subcontracting, the contracting officer must include proposed small business subcontracting participation in the subcontracting plan as an evaluation factor (15 U.S.C. 637(d)(4)(G)(i)).</p> <p>(d) All factors and significant subfactors that will affect contract award and their relative importance shall be stated clearly in the solicitation (10 U.S.C. 2305(a)(2)(A)(i) and 41 U.S.C. 253a(b)(1)(A)) (see 15.204-5(c)). The rating method need not be disclosed in the solicitation. The general approach for evaluating past performance information shall be described.</p> <p>(e) The solicitation shall also state, at a minimum, whether all evaluation factors other than cost or</p>

							price, when combined, are- (1) Significantly more important than cost or price; (2) Approximately equal to cost or price; or (3) Significantly less important than cost or price (10 U.S.C. 2305(a)(3)(A)(iii) and 41 U.S.C. 253a(c)(1)(C)).
		X	X		X	X	<p>15.305 Proposal evaluation.</p> <p>(a) Proposal evaluation is an assessment of the proposal and the offeror's ability to perform the prospective contract successfully. An agency shall evaluate competitive proposals and then assess their relative qualities solely on the factors and subfactors specified in the solicitation. Evaluations may be conducted using any rating method or combination of methods, including color or adjectival ratings, numerical weights, and ordinal rankings. The relative strengths, deficiencies, significant weaknesses, and risks supporting proposal evaluation shall be documented in the contract file.</p> <p>(1) <i>Cost or price evaluation.</i> Normally, competition establishes price reasonableness. Therefore, when contracting on a firm-fixed-price or fixed-price with economic price adjustment basis, comparison of the proposed prices will usually satisfy the requirement to perform a price analysis, and a cost analysis need not be performed. In limited situations, a cost analysis (see 15.403-1(c)(1)(i)(B)) may be appropriate to establish reasonableness of the otherwise successful offeror's price. When contracting on a cost-reimbursement basis, evaluations shall include a cost realism analysis to determine what the Government should realistically expect to pay for the proposed effort, the offeror's understanding of the work, and the offeror's ability to perform the contract. (See 37.115 for uncompensated overtime evaluation.) The contracting officer shall document the cost or price evaluation.</p> <p>(2) <i>Past performance evaluation.</i></p> <p>(i) Past performance information is one indicator of an offeror's ability to perform the contract successfully. The currency and relevance of the information, source of the information, context of the data, and general trends in contractor's performance shall be considered. This comparative assessment of past performance information is separate from the responsibility determination required under Subpart 9.1.</p> <p>(ii) The solicitation shall describe the approach for evaluating past performance, including evaluating offerors with no relevant performance history, and shall provide offerors an opportunity to identify past or current contracts (including Federal, State, and local government and private) for efforts similar to the Government requirement. The solicitation shall also authorize offerors to provide information on problems encountered on the identified contracts and the offeror's corrective actions. The Government shall consider this information, as well as information obtained from any other sources, when evaluating the offeror's past performance. The source selection authority shall determine the relevance of similar past performance information.</p> <p>(iii) The evaluation should take into account past performance information regarding predecessor companies, key personnel who have relevant experience, or subcontractors that will perform major or critical aspects of the requirement when such information is relevant to the instant acquisition.</p> <p>(iv) In the case of an offeror without a record of relevant past performance or for whom information on past performance is not available, the offeror may not be evaluated favorably or unfavorably on</p>

							<p>past performance.</p> <p>(v) The evaluation should include the past performance of offerors in complying with subcontracting plan goals for small disadvantaged business (SDB) concerns (see Subpart 19.7), monetary targets for SDB participation (see 19.1202), and notifications submitted under 19.1202-4(b).</p> <p>(3) <i>Technical evaluation.</i> When tradeoffs are performed (see 15.101-1), the source selection records shall include-</p> <p>(i) An assessment of each offeror's ability to accomplish the technical requirements; and</p> <p>(ii) A summary, matrix, or quantitative ranking, along with appropriate supporting narrative, of each technical proposal using the evaluation factors.</p> <p>(4) <i>Cost information</i> Cost information may be provided to members of the technical evaluation team in accordance with agency procedures.</p> <p>(5) <i>Small business subcontracting evaluation.</i> Solicitations must be structured to give offers from small business concerns the highest rating for the evaluation factors in 15.304(c)(3)(iii) and (c)(5).</p> <p>(b) The source selection authority may reject all proposals received in response to a solicitation, if doing so is in the best interest of the Government.</p> <p>(c) For restrictions on the use of support contractor personnel in proposal evaluation, see 37.203(d).</p>
		X	X		X	X	<p>15.308 Source selection decision.</p> <p>The source selection authority's (SSA) decision shall be based on a comparative assessment of proposals against all source selection criteria in the solicitation. While the SSA may use reports and analyses prepared by others, the source selection decision shall represent the SSA's independent judgment. The source selection decision shall be documented, and the documentation shall include the rationale for any business judgments and tradeoffs made or relied on by the SSA, including benefits associated with additional costs. Although the rationale for the selection decision must be documented, that documentation need not quantify the tradeoffs that led to the decision.</p>
		X	X		X	X	<p>Subpart 15.4- Contract Pricing</p> <p>15.400 Scope of subpart.</p> <p>This subpart prescribes the cost and price negotiation policies and procedures for pricing negotiated prime contracts (including subcontracts) and contract modifications, including modifications to contracts awarded by sealed bidding.</p> <p>15.401 Definitions.</p> <p>As used in this subpart-</p> <p>"Price" means cost plus any fee or profit applicable to the contract type.</p> <p>"Subcontract" (except as used in 15.407-2) also includes a transfer of commercial items between divisions, subsidiaries, or affiliates of a contractor or a subcontractor (10 U.S.C. 2306a(h)(2) and 41</p>

								<p>U.S.C. 254b(h)(2)).</p> <p>15.402 Pricing policy.</p> <p>Contracting officers must-</p> <p>(a) Purchase supplies and services from responsible sources at fair and reasonable prices. In establishing the reasonableness of the offered prices, the contracting officer must not obtain more information than is necessary. To the extent that cost or pricing data are not required by 15.403-4, the contracting officer must generally use the following order of preference in determining the type of information required:</p> <p>(1) No additional information from the offeror, if the price is based on adequate price competition, except as provided by 15.403-3(b).</p> <p>(2) Information other than cost or pricing data:</p> <p>(i) Information related to prices (<i>e.g.</i>, established catalog or market prices or previous contract prices), relying first on information available within the Government; second, on information obtained from sources other than the offeror; and, if necessary, on information obtained from the offeror. When obtaining information from the offeror is necessary, unless an exception under 15.403-1(b)(1) or (2) applies, such information submitted by the offeror shall include, at a minimum, appropriate information on the prices at which the same or similar items have been sold previously, adequate for evaluating the reasonableness of the price.</p> <p>(ii) Cost information, that does not meet the definition of cost or pricing data at 2.101.</p> <p>(3) <i>Cost or pricing data</i>. The contracting officer should use every means available to ascertain whether a fair and reasonable price can be determined before requesting cost or pricing data. Contracting officers must not require unnecessarily the submission of cost or pricing data, because it leads to increased proposal preparation costs, generally extends acquisition lead time, and consumes additional contractor and Government resources.</p> <p>(b) Price each contract separately and independently and not-</p> <p>(1) Use proposed price reductions under other contracts as an evaluation factor; or</p> <p>(2) Consider losses or profits realized or anticipated under other contracts.</p> <p>(c) Not include in a contract price any amount for a specified contingency to the extent that the contract provides for a price adjustment based upon the occurrence of that contingency.</p> <p>15.404 Proposal analysis.</p> <p>15.404-1 Proposal analysis techniques.</p> <p>(a) <i>General</i>. The objective of proposal analysis is to ensure that the final agreed-to price is fair and reasonable.</p> <p>(1) The contracting officer is responsible for evaluating the reasonableness of the offered prices. The analytical techniques and procedures described in this subsection may be used, singly or in combination with others, to ensure that the final price is fair and reasonable. The complexity and circumstances of each acquisition should determine the level of detail of the analysis required.</p> <p>(2) Price analysis shall be used when cost or pricing data are not required (see paragraph (b) of this subsection and 15.404-3).</p>
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								<p>(3) Cost analysis shall be used to evaluate the reasonableness of individual cost elements when cost or pricing data are required. Price analysis should be used to verify that the overall price offered is fair and reasonable.</p> <p>(4) Cost analysis may also be used to evaluate information other than cost or pricing data to determine cost reasonableness or cost realism.</p> <p>(5) The contracting officer may request the advice and assistance of other experts to ensure that an appropriate analysis is performed.</p> <p>(6) Recommendations or conclusions regarding the Government's review or analysis of an offeror's or contractor's proposal shall not be disclosed to the offeror or contractor without the concurrence of the contracting officer. Any discrepancy or mistake of fact (such as duplications, omissions, and errors in computation) contained in the cost or pricing data or information other than cost or pricing data submitted in support of a proposal shall be brought to the contracting officer's attention for appropriate action.</p> <p>(7) The Air Force Institute of Technology (AFIT) and the Federal Acquisition Institute (FAI) jointly prepared a five-volume set of Contract Pricing Reference Guides to guide pricing and negotiation personnel. The five guides are: I Price Analysis, II Quantitative Techniques for Contract Pricing, III Cost Analysis, IV Advanced Issues in Contract Pricing, and V Federal Contract Negotiation Techniques. These references provide detailed discussion and examples applying pricing policies to pricing problems. They are to be used for instruction and professional guidance. However, they are not directive and should be considered informational only. They are available via the internet at http://www.acq.osd.mil/dp/cpf.</p> <p>(b) <i>Price analysis.</i></p> <p>(1) Price analysis is the process of examining and evaluating a proposed price without evaluating its separate cost elements and proposed profit.</p> <p>(2) The Government may use various price analysis techniques and procedures to ensure a fair and reasonable price. Examples of such techniques include, but are not limited to, the following:</p> <p>(i) Comparison of proposed prices received in response to the solicitation. Normally, adequate price competition establishes price reasonableness (see 15.403-1(c)(1)).</p> <p>(ii) Comparison of previously proposed prices and previous Government and commercial contract prices with current proposed prices for the same or similar items, if both the validity of the comparison and the reasonableness of the previous price(s) can be established.</p> <p>(iii) Use of parametric estimating methods/application of rough yardsticks (such as dollars per pound or per horsepower, or other units) to highlight significant inconsistencies that warrant additional pricing inquiry.</p> <p>(iv) Comparison with competitive published price lists, published market prices of commodities, similar indexes, and discount or rebate arrangements.</p> <p>(v) Comparison of proposed prices with independent Government cost estimates.</p> <p>(vi) Comparison of proposed prices with prices obtained through market research for the same or similar items.</p> <p>(vii) Analysis of pricing information provided by the offeror.</p> <p>(3) The first two techniques at 15.404-1(b)(2) are the preferred techniques. However, if the contracting</p>
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								<p>officer determines that information on competitive proposed prices or previous contract prices is not available or is insufficient to determine that the price is fair and reasonable, the contracting officer may use any of the remaining techniques as appropriate to the circumstances applicable to the acquisition.</p> <p>(4) Value analysis can give insight into the relative worth of a product and the Government may use it in conjunction with the price analysis techniques listed in paragraph (b)(2) of this section.</p> <p>(c) <i>Cost analysis.</i></p> <p>(1) Cost analysis is the review and evaluation of the separate cost elements and profit in an offeror's or contractor's proposal (including cost or pricing data or information other than cost or pricing data), and the application of judgment to determine how well the proposed costs represent what the cost of the contract should be, assuming reasonable economy and efficiency.</p> <p>(2) The Government may use various cost analysis techniques and procedures to ensure a fair and reasonable price, given the circumstances of the acquisition. Such techniques and procedures include the following:</p> <p>(i) Verification of cost or pricing data and evaluation of cost elements, including-</p> <p>(A) The necessity for, and reasonableness of, proposed costs, including allowances for contingencies;</p> <p>(B) Projection of the offeror's cost trends, on the basis of current and historical cost or pricing data;</p> <p>(C) Reasonableness of estimates generated by appropriately calibrated and validated parametric models or cost-estimating relationships; and</p> <p>(D) The application of audited or negotiated indirect cost rates, labor rates, and cost of money or other factors.</p> <p>(ii) Evaluating the effect of the offeror's current practices on future costs. In conducting this evaluation, the contracting officer shall ensure that the effects of inefficient or uneconomical past practices are not projected into the future. In pricing production of recently developed complex equipment, the contracting officer should perform a trend analysis of basic labor and materials, even in periods of relative price stability.</p> <p>(iii) Comparison of costs proposed by the offeror for individual cost elements with-</p> <p>(A) Actual costs previously incurred by the same offeror;</p> <p>(B) Previous cost estimates from the offeror or from other offerors for the same or similar items;</p> <p>(C) Other cost estimates received in response to the Government's request;</p> <p>(D) Independent Government cost estimates by technical personnel; and</p> <p>(E) Forecasts of planned expenditures.</p> <p>(iv) Verification that the offeror's cost submissions are in accordance with the contract cost principles and procedures in Part 31 and, when applicable, the requirements and procedures in 48 CFR Chapter 99 (Appendix to the FAR looseleaf edition), Cost Accounting Standards.</p> <p>(v) Review to determine whether any cost or pricing data necessary to make the contractor's proposal accurate, complete, and current have not been either submitted or identified in writing by the contractor. If there are such data, the contracting officer shall attempt to obtain them and negotiate, using them or making satisfactory allowance for the incomplete data.</p> <p>(vi) Analysis of the results of any make-or-buy program reviews, in evaluating subcontract costs (see 15.407-2).</p>
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								<p>(d) <i>Cost realism analysis.</i></p> <p>(1) Cost realism analysis is the process of independently reviewing and evaluating specific elements of each offeror's proposed cost estimate to determine whether the estimated proposed cost elements are realistic for the work to be performed; reflect a clear understanding of the requirements; and are consistent with the unique methods of performance and materials described in the offeror's technical proposal.</p> <p>(2) Cost realism analyses shall be performed on cost-reimbursement contracts to determine the probable cost of performance for each offeror.</p> <p>(i) The probable cost may differ from the proposed cost and should reflect the Government's best estimate of the cost of any contract that is most likely to result from the offeror's proposal. The probable cost shall be used for purposes of evaluation to determine the best value.</p> <p>(ii) The probable cost is determined by adjusting each offeror's proposed cost, and fee when appropriate, to reflect any additions or reductions in cost elements to realistic levels based on the results of the cost realism analysis.</p> <p>(3) Cost realism analyses may also be used on competitive fixed-price incentive contracts or, in exceptional cases, on other competitive fixed-price-type contracts when new requirements may not be fully understood by competing offerors, there are quality concerns, or past experience indicates that contractors' proposed costs have resulted in quality or service shortfalls. Results of the analysis may be used in performance risk assessments and responsibility determinations. However, proposals shall be evaluated using the criteria in the solicitation, and the offered prices shall not be adjusted as a result of the analysis.</p> <p>(e) <i>Technical analysis.</i></p> <p>(1) The contracting officer may request that personnel having specialized knowledge, skills, experience, or capability in engineering, science, or management perform a technical analysis of the proposed types and quantities of materials, labor, processes, special tooling, facilities, the reasonableness of scrap and spoilage, and other associated factors set forth in the proposal(s) in order to determine the need for and reasonableness of the proposed resources, assuming reasonable economy and efficiency.</p> <p>(2) At a minimum, the technical analysis should examine the types and quantities of material proposed and the need for the types and quantities of labor hours and the labor mix. Any other data that may be pertinent to an assessment of the offeror's ability to accomplish the technical requirements or to the cost or price analysis of the service or product being proposed should also be included in the analysis.</p> <p>(f) <i>Unit prices.</i></p> <p>(1) Except when pricing an item on the basis of adequate price competition or catalog or market price, unit prices shall reflect the intrinsic value of an item or service and shall be in proportion to an item's base cost (e.g., manufacturing or acquisition costs). Any method of distributing costs to line items that distorts the unit prices shall not be used. For example, distributing costs equally among line items is not acceptable except when there is little or no variation in base cost.</p> <p>(2) Except for the acquisition of commercial items, contracting officers shall require that offerors identify in their proposals those items of supply that they will not manufacture or to which they will not contribute significant value, unless adequate price competition is expected (10 U.S.C. 2304 and 41</p>
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								<p>U.S.C. 254(d)(5)(A)(i)). Such information shall be used to determine whether the intrinsic value of an item has been distorted through application of overhead and whether such items should be considered for breakout. The contracting officer may require such information in all other negotiated contracts when appropriate.</p> <p>(g) <i>Unbalanced pricing.</i></p> <p>(1) Unbalanced pricing may increase performance risk and could result in payment of unreasonably high prices. Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more contract line items is significantly over or understated as indicated by the application of cost or price analysis techniques. The greatest risks associated with unbalanced pricing occur when-</p> <p>(i) Startup work, mobilization, first articles, or first article testing are separate line items;</p> <p>(ii) Base quantities and option quantities are separate line items; or</p> <p>(iii) The evaluated price is the aggregate of estimated quantities to be ordered under separate line items of an indefinite-delivery contract.</p> <p>(2) All offers with separately priced line items or subline items shall be analyzed to determine if the prices are unbalanced. If cost or price analysis techniques indicate that an offer is unbalanced, the contracting officer shall-</p> <p>(i) Consider the risks to the Government associated with the unbalanced pricing in determining the competitive range and in making the source selection decision; and</p> <p>(ii) Consider whether award of the contract will result in paying unreasonably high prices for contract performance.</p> <p>(3) An offer may be rejected if the contracting officer determines that the lack of balance poses an unacceptable risk to the Government.</p> <p>15.405 Price negotiation.</p> <p>(a) The purpose of performing cost or price analysis is to develop a negotiation position that permits the contracting officer and the offeror an opportunity to reach agreement on a fair and reasonable price. A fair and reasonable price does not require that agreement be reached on every element of cost, nor is it mandatory that the agreed price be within the contracting officer's initial negotiation position. Taking into consideration the advisory recommendations, reports of contributing specialists, and the current status of the contractor's purchasing system, the contracting officer is responsible for exercising the requisite judgment needed to reach a negotiated settlement with the offeror and is solely responsible for the final price agreement. However, when significant audit or other specialist recommendations are not adopted, the contracting officer should provide rationale that supports the negotiation result in the price negotiation documentation.</p> <p>(b) The contracting officer's primary concern is the overall price the Government will actually pay. The contracting officer's objective is to negotiate a contract of a type and with a price providing the contractor the greatest incentive for efficient and economical performance. The negotiation of a contract type and a price are related and should be considered together with the issues of risk and uncertainty to the contractor and the Government. Therefore, the contracting officer should not become preoccupied with any single element and should balance the contract type, cost, and profit or fee negotiated to achieve a total result-a price that is fair and reasonable to both the Government and</p>
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								<p>the contractor.</p> <p>(c) The Government's cost objective and proposed pricing arrangement directly affect the profit or fee objective. Because profit or fee is only one of several interrelated variables, the contracting officer shall not agree on profit or fee without concurrent agreement on cost and type of contract.</p> <p>(d) If, however, the contractor insists on a price or demands a profit or fee that the contracting officer considers unreasonable, and the contracting officer has taken all authorized actions (including determining the feasibility of developing an alternative source) without success, the contracting officer shall refer the contract action to a level above the contracting officer. Disposition of the action should be documented.</p>
Combination of Competitive Procedures								Contracting Officers are given the discretion to use any combination of competitive procedures. See 6.102(c)
Other Competitive Procedures								Relates to selection of architects and engineers. See 6.102(d)

Delivery Method Key:

DBB – Design/Bid/Build, traditional low-bid method, two separate contracts (designer and contractor), contractor determined on price alone notwithstanding “responsible” bidder criteria.

DB -	Design/Build, one contract (d/b entity), contractor determined through a proposal process with price and/or other criteria governing selection.
DNB -	Design/Negotiate/Build, two separate contracts (designer and contractor), contractor determined through a qualification-based selection process.
CM @ R -	Construction Manager @ Risk, can be two separate contracts (designer and construction manager) or one (CM does all including hiring of designer), determined through a proposal process with price and/or other criteria governing selection.
Pre-Qual -	Proposal/evaluation process to determine those entities who are eligible to submit bids or proposals, used in conjunction with one of the four main delivery methods.
Performance -	Proposal/evaluation process to determine those entities who are eligible to submit bids or proposals, used in conjunction with one of the four main delivery methods.
Other -	Means some other definition is used to select the designer and contractor or single-entity, e.g. "best value". Contract form typically falls under one of the four major types listed above.